

OPEN SPACE COUNCIL

December 5, 2012, 9:00 a.m.
Legislative Hall
Senate Hearing Room, Second Floor
Dover, Delaware

ATTENDANCE

Council Members:

Mr. John R. Schroeder, Chairperson
Paul Boswell, Esq.
Honorable Gerald Brady, State Representative
Mrs. Lorraine Fleming
Mr. David Humes
Mr. Porter Schutt, III

Ex-Officio:

Mr. Charles A. Salkin, State Liaison Officer, LWCF
Mr. Timothy Slavin, Director, Historical & Cultural Affairs
Department of State, for Secretary Bullock
Dave Small, Office of the Secretary, DNREC
Mr. Jeff Stone, Director, Infrastructure, &
Inter-Governmental Relations, DEDO, for Secretary Levin

Advisory To:

Secretary Collin O'Mara, DNREC (not present)

Visitors

Staff:

David Small, Deputy Secretary, DNREC
Karen Bennett, Fish & Wildlife, DNREC
Eileen Butler, Parks & Recreation, DNREC
Matthew Chesser, Parks & Recreation, DNREC
Patrick Emory, Office the Secretary, DNREC
Richard Phifer, Fish & Wildlife, DNREC
David Saveikis, Director, Fish & Wildlife, DNREC
Elena Stewart, Parks & Recreation, DNREC
Michael Valenti, DE State Forest, DOA
Ron Vickers, Parks & Recreation, DNREC
Rose Ryödi, Parks & Recreation, DNREC

I Call to Order/Announcements

Mr. Schroeder, Chairperson, called the Open Space Council meeting to order at 9:06 a.m. He welcomed Council members, staff and visitors. He asked visitors to sign the attendance sheet.

II Approval of Meetings Minutes

Mr. Schroeder asked for a motion to approve the June 6, 2012 and the September 12, 2012 meeting minutes. Council approved the minutes as recorded.

III Financial Report

Mr. Vickers presented the Financial Report.

The remaining FY2012 Realty Transfer Tax is \$5,255,217.11.

There were seven previously approved projects totaling (\$2,974,225.00). There are four anticipated reimbursements: J. G. Townsend - \$227,577; Rockford Woodlawn - \$100,000; Delaware Nature Society - \$50,000; Yardley Dale - \$829,400; Royal - \$35,000.00. This leaves an available balance of \$3,522,969.11 through December 15, 2012.

New Realty Transfer Tax funds for FY 2013 are \$9,000,000.00, available on December 15, 2012.

Five properties settled since the September 12, 2012 Council meeting:

- Angola Neck Preserve - Beigbeder Property
- Augustine Wildlife Area - Yardley Dale Property
- Auburn Heights Preserve - Yorklyn Hills
- White Clay Creek State Park - William DuPont
- James Branch Nature Preserve - Trap Investments

Since 1990 the Open Space Program completed 351 projects, protecting 53,669 acres, using \$246,469,536.20 of Open Space funds plus \$73,973,661.37 of other funds for a total of \$320,443,197.57.

IV Agency & Public Presentations

Mr. Schroeder asked for announcements, comments, and/or presentations from guests and staff. Staff noted that Secretary O'Mara was called into a Cabinet meeting and that Deputy Secretary David Small would join this meeting as soon as he was able to do a brief presentation.

V Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 09:16 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 10:45 a.m.

VI Project Recommendations

Based on discussion in Executive Session, the Council recommended the following:

- A. Morris Property: 857 acre expansion of the Ted Harvey Wildlife Area; protects habitat of Conservation Concern; allows for inland migration of habitat due to sea level rise; preserves additional DNERR core area; potential for leveraging federal funds and conservation partners' funds; Council directed staff to continue negotiations.
- B. Carey Property: 22.37 acre donation of wetlands as an addition to the Assawoman Wildlife Area; Council moved, seconded, and unanimously agreed to recommend to the Secretary to accept this donation with a letter of acknowledgement and thanks to the landowner.
- C. Givens Property: 32 acre donation of a conservation easement with a right of first refusal near Chipman Pond; protects riparian corridor between Records Pond and Chipman Pond; Council moved, seconded, and unanimously agreed that Council recommend to the Secretary to

accept the donation of the conservation easement with the right of first refusal, carving out a small area for horse-related structures and the right to remove black walnut trees, all actions taking place after the property is purchased by Changing Fates Equine Rescue from Givens.

- D. Straughn Properties: 13.16 acres and 11.12 acres as a connector at Blackbird State Forest; protects riparian corridor and eliminates inholding; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee both parcels for \$330,000 total.
- E. Wilson Property: 91 acre addition to Redden State Forest; protects forest, farm and stream; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee the entire property for \$635,000 or at \$7,000 per acre if owner retains building lots.
- F. Evans Property: 76 acre addition to Redden State Forest; protects forest, farm and stream; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee the entire property for \$525,000 or at \$7,000 per acre if owner retains building lots.

Chairman Schroeder discussed the policy regarding conversion or use of Open Space land. He noted that the State purchased land in Lewes from the University of Delaware in 2002. Subsequent to that the State entered into a lease with the City of Lewes to use a portion of the property for a public park and open space. The City was approached about using a portion of the property for a dog park. A concerned individual asked Mr. Schroeder if the Department was aware of this and if this was allowed. He wanted to bring this issue forward so that the Department would let the Council know when this type of issue comes up and how it is handled.

Mr. Salkin said after the property was acquired by the State using Open Space funds, the City of Lewes asked to lease a portion of the property to enable them to provide outdoor recreational facilities for the community and the region. The lease requires the City to go through a public process to establish a Development and Use Plan for the site. The Department is included in this process and is allowed to review and comment on any Plan. The property is to be used for active and passive recreation for the general public. In this particular case, before there was any public discussion for a dog park, the City approached the Department to confirm if this use was consistent with the lease. They were told it was, but they would have to do it in the context of a Plan that includes public input. Before they develop a dog park, a ball field, picnic area, or anything on that site, they need to go through a public process to develop a comprehensive site plan. To date, the City of Lewes initiated this process and invited the Department to be part of this process. Everything is in accordance with the lease and consistent with the open space limitations.

Mr. Schroeder said it sounds like the City did what it was supposed to do.

Mrs. Fleming asked how this affects this Council and asked if there should be a presentation when the Plan is ready to go forward?

Mr. Salkin said this would not be an Open Space Council issue, unless there was a change in use from recreation and open space.

Mr. Schroeder reminded all of past Council meetings where groups expressed interest in using part of the land along the Glade Road for the YMCA or other organizations. Schroeder said the process, as he knows it, is if there is a situation whereby there could be a potential change in use of open space land, then the Council wants the Department to bring that information forward at a Council meeting. Even if it is just a lease for parkland, he wants the Council informed prior to the execution of any lease. He also handed out a paper with a portion of the Delaware Land

Protection Act on it. It was one of the Council's responsibilities, namely "The Council shall advise and consult regarding any change from permanently protected status of open space lands acquired or otherwise protected."

Mr. Salkin said the Department will follow these guidelines. The Department will bring to the Council any actions that may apply to this. It should be routine to bring these items forward so Council knows what the Department is doing. Regarding the Glade Road property, the Department had additional discussions about the site, but nothing specific to bring before the Council. Based on the experience with the wind turbine, he said some of these issues should have involved the oversight of the Council and perhaps the General Assembly. Nevertheless, some projects are rather benign, such as a dog park on public recreation land.

Mr. Small said any action regarding the Glade Property would require a public process beyond just the Council. The Department understands the Council's concern. When in doubt, let us have a discussion.

Mr. Schroeder said Council's perspective is that if there are negotiations going on with a project and there is the belief that it will go public, it is important that the Department make Council members aware. Even though it may not be timely to bring it to Council because we meet quarterly, things can occur and he does not want any Council member to be blindsided by finding out that open space land might be used for something else.

Mr. Salkin asked the Council to consider having a standing agenda item related to these issues.

Mr. Small conveyed Secretary O'Mara's apologies for not attending today's meeting. He was called in to a Cabinet meeting.

Mr. Small said the Department would like to begin a discussion with the Open Space Council regarding Delaware's wetlands. The Department has concerns about the status of the State's wetlands resources. Recently DNREC completed a wetlands analysis and saw that losses continue. The Department would like to pursue, with Council's input, a program that looks at acquiring easements on high functioning and high value wetlands by means of a targeted, strategic, and systematic approach. DNREC is starting a mapping exercise to show where these wetlands are located. This would then be used as a basis for a protection strategy. The Department recognizes that it is not going to be able to preserve all of these resources through regulation alone. It wants to work with the Council to use all types of protection strategies. He said that during the aftermath of Hurricane Sandy many people are focusing on the value of wetlands for flood protection. Also as we confront sea level rise we are thinking about where additional wetland resources will be located in the future. This is just a brief introduction now and we will be back with more in future meetings.

Mrs. Fleming asked if this effort will address freshwater wetlands.

Mr. Small said that it would.

Mrs. Fleming noted that the Open Space Program's attention is currently directed at the Delaware Bayshore Initiative and the Nanticoke River watershed. She asked if this is another priority area.

Mr. Small said that high value wetlands in those two areas would be a priority. There are also other small wetland complexes in other parts of the State such as the Appoquinimink and Blackbird drainages. The mapping process will help sort this out.

Mr. Schroeder said he thought this was a good initiative. He wanted to make sure the program would continue to look at ways to leverage funding to protect more land, whether it was through easements or fee simple. The Council would also like to hear more from the Secretary regarding how to get more funds into the program and how to maximize leveraging what was available. He

noted that one of the projects today already had development rights purchased through the Aglands Preservation program and now the Open Space Program was considering purchasing the property. His concern is that we only have so many resources and if we are using them efficiently.

Mr. Small said he appreciated the comments. In the current economic climate it would be difficult for the State to take on additional debt service. One idea that is being looked into is the State revolving funds for wastewater and stormwater projects and how the protection of certain wetlands assists in water quality benefits. By working with the qualifying jurisdictions and adjusting interest rates there may be an opportunity to protect more land.

Rep. Brady said he read the recent News Journal articles about sea level rise and wetlands. He asked if some of the purchases we make today might be under water in the future and how do we look at buffers to these areas.

Mr. Small said that is a great question. As the Council evaluates properties it should consider sea level rise and subsidence and current mapping efforts. We should consider what the area will look like in 20-50 years. Maybe what is high ground now might be wetlands in the future.

Mrs. Stewart noted that the Department uses sea level rise projections in its rankings of properties brought before the Council.

Mrs. Bennett wanted to emphasize that the sea level rise inundation maps are models and that they should be used for guidance only. For any particular property the specific on-site conditions will determine what the area will look like 20, 50, 100 years in the future. There are many complex elements that influence what a site will look like and staff is actively involved in looking at the data. We need to consider all the factors and help guide property owners. We should consider the function of the adjacent uplands that would replace the lost wetland values once a wetland is inundated.

VII Next Meeting and Adjournment

The next Open Space Council meeting will be held at Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, on March 6, 2013, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 11:06 a.m.